

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

January 4, 2005

IN RE:

JOINT PETITION FOR ARBITRATION OF NEWSOUTH)
COMMUNICATIONS CORP, NUVOX COMMUNICATIONS,) DOCKET NO.
INC., KMC TELECOM V, INC., KMC TELECOM III LLC, AND) 04-00046
XSPEDIUS COMMUNICATIONS, LLC ON BEHALF OF ITS)
OPERATING SUBSIDIARIES XSPEDIUS MANAGEMENT CO.,)
SWITCHED SERVICES, LLC AND XSPEDIUS MANAGEMENT)
CO. OF CHATTANOOGA, LLC OF AN INTERCONNECTION)
AGREEMENT WITH BELL SOUTH TELECOMMUNICATIONS,)
INC.)

ORDER DIRECTING FILING OF JOINT ISSUES MATRIX AND
AMENDING PROCEDURAL SCHEDULE

On February 11, 2004, New South Communications Corp., NuVox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III, LLC, and Xspedius Communications, LLC on behalf of its operating subsidiaries Xspedius Management Co. Switched Services, LLC and Xspedius Management Co. of Chattanooga, LLC ("the Joint Petitioners") filed their *Joint Petition for Arbitration*. BellSouth Telecommunications, Inc. ("BellSouth") filed its answer to the *Joint Petition for Arbitration* on March 8, 2004. On April 13, 2004, the parties filed a Joint Issues Matrix, identifying some 31 items for arbitration. On May 19, 2004, the parties filed a revised joint issues matrix, identifying 107 items for arbitration, and agreed to waive the nine-month deadline referenced in 47 U.S.C. § 252(b)(4)(C). On June 8, 2004, the Pre-Arbitration Officer previously assigned to this docket issued an *Order Accepting Petitions for Arbitration*, in which she adopted the issues identified in the May 19, 2004 Joint Issues Matrix for the purpose of the arbitration. She further directed that any modification of an issues statement in the Joint

Issues Matrix to be filed on June 25, 2004 would be subject to the approval of the Authority. Subsequently, a revised Joint Issues Matrix identifying 107 items was filed by the parties on June 25, 2004.

On July 15, 2004, the parties filed a *Joint Motion to Hold Proceedings in Abeyance*, in which they requested an abeyance of the proceedings until October 1, 2004 in light of the decision in *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA I*"). Specifically, the parties requested the abeyance so that they could consider "how the post *USTA II* regulatory framework should be incorporated into the new agreements being arbitrated and to identify what arbitration issues may be impacted and what additional issues, if any, need to be identified for arbitration."¹ The Pre-Arbitration Officer granted the request to hold the docket in abeyance on July 16, 2004.² On October 13, 2004, the parties filed a Joint Issues/Open Items Matrix, identifying 114 items for arbitration, including additional issues related to *USTA II*.

At a status conference held on November 19, 2004, the Pre-Arbitration Officer pointed out that the October 13, 2004 Joint Issues/Open Items Matrix, which included additional *USTA II* issues, was contrary to the *Order Accepting Petitions for Arbitration*, which accepted those issues identified in the June 25, 2004 Joint Issues Matrix for arbitration. Upon inquiry from the Pre-Arbitration Officer concerning the additional *USTA II* issues for which arbitration was being sought, BellSouth indicated its position was that the supplemental issues should be addressed in the generic docket filed by BellSouth³ rather than in the arbitration.⁴ The Joint Petitioners indicated that, although their position was that a generic docket was premature, there were a

¹ See *Joint Motion to Hold Proceedings in Abeyance*, p 2 (July 15, 2004)

² See *Order Granting Joint Motion to Hold Proceedings in Abeyance and Establishing Revised Procedural Schedule* (July 16, 2004)

³ See *In re BellSouth's Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes of Law*, Docket No. 04-000381, *Petition to Establish Generic Docket* (October 29, 2004)

⁴ Transcript of Proceedings, pp. 11-12 (November 19, 2004)

number of options including a generic docket to address the supplemental issues.⁵

The Pre-Arbitration Officer finds that, pursuant to 47 U.S.C. § 252(b)(4)(A),⁶ issues for arbitration must be raised in the petition or response. The supplemental issues related to *USTA II* are found neither in the *Joint Petition for Arbitration* filed by the Joint Petitioners nor in the response filed by BellSouth. In addition, the June 8, 2004 *Order Accepting Petitions for Arbitration* adopted the issues identified in the May 19, 2004 Joint Issues Matrix for the purpose of the arbitration, which did not include the *USTA II* issues. Finally, the parties have conceded that there are other options available to address the *USTA II* issues and have not shown that any prejudice will occur by disallowing the supplemental issues in this arbitration. As a result, the Pre-Arbitration Officer finds that the supplemental issues related to *USTA II* added to the October 13, 2004 Joint Issues/Open Items Matrix should be stricken from consideration by the arbitration panel. The parties are directed to file a revised matrix based upon the issues identified in the June 25, 2004 matrix, indicating any issues that have since been settled and any issue statements that have been agreed upon by the parties.

In addition, as discussed at the Status Conference, the remainder of the Procedural Schedule is amended as set forth below:

December 3, 2004

The Parties shall file with the TRA a revised Joint Issues Matrix representing the consensus of the Parties on all issues

December 3, 2004

All Discovery Requests Served (one copy filed with Authority)

⁵ Transcript of Proceedings, pp 12-13 (November 19, 2004)

⁶ 47 U.S.C. § 252(b)(4)(A) reads

(4) ACTION BY STATE COMMISSION –

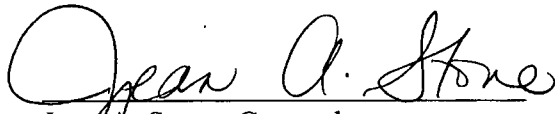
(A) The State commission shall limit its consideration of any petition under paragraph (1) (and any response thereto) to the issues set forth in the petition and in the response, if any, filed under paragraph (3)

December 30, 2004	Responses and Objections to Discovery Due (one copy filed with Authority)
December 30, 2004	Preliminary Dispositive Motions (if any)
January 5, 2005	Motions to Compel
January 6, 2005	Responses to any Preliminary Dispositive Motions (if any)
January 7, 2005	Status Conference on Discovery (if needed)
January 14, 2005	Supplemental Responses to Discovery (if ordered)
January 19, 2005	Pre-hearing Conference
January 25-28, 2005	Hearing before Arbitration Panel

All filings are due **no later than 2:00 p.m.** on the dates indicated.

IT IS THEREFORE ORDERED THAT:

1. The Parties are directed to file an updated joint issues matrix reflecting the issues identified in the June 25, 2004 matrix and indicating any issues that have since been settled and any issue statements that have been agreed upon by the parties; and
2. The Procedural Schedule is amended as stated herein.


Jean A. Stone, Counsel
as Pre-Arbitration Officer